IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 18856 of 2004

Between:

D.Rajamma W/o Manjunath
Tanakal Mandal, Anantapur District

..... PETITIONER

AND

1 Revinue Divisional Officer Penukonda Division, Anantapur District.
2 Mandal Revenue Officer Tanakal Mandal , Anantapur District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, or direction preferably one in the nature of writ of Mandamus, declaring the action of the respondents in not supplying the essential commodities to the petitioner in respect of Fair Price Shop Korthikota village of Tankal Mandal. Anantapur District during the subsistence of authorisation as illeagl arbitrary and violative of AP. Control Order 1973 and violative of Art. 14,16,and 21 of the constitution of India and consequently direct the respondents to supply the essential commodities to the petitioners Fair Price Shop as usual

Counsel for the Petitioner: MR. M.PRASADA RAO

Counsel for the Respondents: GP FOR REVENUE

The Court at the stage of admission made the following:

O R D E R:

This writ petition is filed seeking a declaration that the alleged action of the respondents in not permitting the petitioners to lift the stocks without there being any justifiable reason is arbitrary and illegal.

The petitioner claims to be the authorised Dealer of the Fair Price Shop of Korthikota Village, Ananthapur District. While so, the first respondent, basing on a report submitted by the second respondent, issued a show-cause notice dated 24-09-2004 calling upon the petitioner to explain as to why her authorisation should not be cancelled on the ground of the irregularities specified thereunder. The petitioner states that all the said allegations are false and baseless and she has already submitted a detailed reply to the said notice. Thereafter, no orders have been passed so far and her authorisation is neither suspended nor cancelled. However, the respondents failed to supply the essential commodities to the petitioner for distribution to

the cardholders. Hence, this writ petition seeking the above relief.

This Court, while directing notice before admission, by an order dated 13-10-2004, directed the respondents to permit the petitioner to lift the stocks, if the petitioner is holding a valid authorisation and the same is subsisting as on that date.

In spite of service of notice, the respondents did not choose to file any counter-affidavit. Hence, the uncontroverted averments in the writ petition shall be taken to have been admitted.

I have heard the learned Counsel for the petitioner and the learned Government Pleader appearing for the respondents.

Even assuming that any enquiry with regard to the alleged irregularities in distribution of the essential commodities is pending against the petitioner, the question is whether the authorities can refuse to supply the essential commodities to the petitioner without either suspending or cancelling the authorisation.

This issue has been considered by a Full Bench of this Court in OLETI TIRUPATHAMMA v. DISTRICT SUPPLY OFFICER (CITY), VISAKHAPATNAM AND OTHERS and while concluding that in such circumstances the proceedings under Article 226 of the Constitution of India are maintainable, it has been held as under:

> *"The High Court while exercising its jurisdiction under Article 226 of the Constitution of India, acts sentinel qui vive and thus it has to protect the citizen from arbitrary and capricious action of the executive. If the licensing authority themselves upon application of mind come to the conclusion that the irregularities committed by the fair price shop dealer would warrant suspension of his licence, it may do so. But, in our considered opinion, the authority without taking recourse to the said action, cannot, refuse to supply the essential commodities."*

In the light of the ratio laid down by the Full Bench in the above decision, I deem it appropriate to dispose of the Writ Petition with a direction to the respondents to supply the essential commodities to

the petitioner in case she is holding a valid authorisation and the same is subsisting as on today. It is made clear that this order shall not preclude the respondents to initiate appropriate proceedings against the petitioner if the circumstances so warrant, following due process of law.

The Writ Petition is accordingly disposed of. No costs.

(G. ROHINI, J)

Date: 10-11-2004

ghn

To

1 Revinue Divisional Officer Penukonda Division, Anantapur District.

2 Mandal Revenue Officer Tanakal Mandal , Anantapur District

3 Two C.Cs to the G.P. for Revenue, High Court Buildings, Hyderabad (OUT)

4 Two C.D copies.